

SENATE No. 453

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen J. Buoniconti

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to homeowners insurance.

PETITION OF:

NAME:

Stephen J. Buoniconti

DISTRICT/ADDRESS:

Hampden

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02778 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO HOMEOWNERS INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 **SECTION 1.** Chapter 175 of the General Laws, as appearing in the 2006 Official
2 Edition, is hereby amended by inserting after section 4C the following section:-
3 Section 4D. The commissioner shall adopt regulations to require all insurers licensed to write
4 and engaged in the writing of homeowners insurance the commonwealth and the joint
5 underwriting association, established in chapter 175C, shall produce a standard outline of
6 coverage written in language prescribed or approved by the commissioner that describe the
7 features of the coverage. Each insurer, including the joint underwriting association, shall be
8 required to provide this information to each policyholder upon the issuance or renewal of a
9 policy.

10 **SECTION 2.** Said chapter 175, as so appearing, is hereby amended by inserting after
11 section 99C the following 2 sections: -
12 Section 99D. (a) In all instances where an insurance company licensed to write property
13 insurance in the commonwealth offers or includes any deductible for wind related damages and

mitigation measures related to such deductible, the insurance company shall provide prominent and clear notice to the insured that shall be included with the policy issuance or renewal package, and shall fully disclose all details pertaining to any such deductible and mitigation measure in a format approved by the commissioner of insurance.

(b) An insurer may only apply a deductible for wind related damages in personal lines of insurance, where:

(1) the deductible is specifically approved by the commissioner and shall not exceed 3 per cent of the insured value of the dwelling;

(2) the deductible shall be applicable to losses due to a hurricane during the period commencing with the issuance of a hurricane warning or hurricane wind speed warning for any part of the state by the National Hurricane Center and concluding 24 hours after the termination of the last hurricane warning or hurricane wind speed warning for any part of the state;

(3) the deductible, whether a flat dollar amount or a percentage of insured value, shall be presented in at least 2 examples that illustrate the application of the deductible to the insured.

Nothing herein shall prohibit the insurer from providing any additional information to the insured to assist in the insured's understanding of the deductible to be applied to the insured's policy.

(c) The commissioner, in consultation with the board of building and regulations and standards, shall investigate mitigation measures designed to reduce losses from wind related damages.

Based so far as reasonably feasible on national standards for such measures and practices in other comparable states, the commissioner shall adopt regulations describing approved mitigation measures and the minimum corresponding benefits, such as credits, lower deductibles, and reduced premiums that policyholders will receive from insurers upon completion of said

measures and either inspection of the property by the insurer or submission of satisfactory proof of installation of the approved mitigation measures by the insured.

(d) The commissioner shall adopt regulations to implement this section.

Section 99E. (a) There shall be a Center for Hurricane Research, hereinafter referred to as the center, at the University of Massachusetts at Lowell. The center shall employ such expert, clerical, or other assistants as the work of the center may require. For the purpose of carrying out its duties as set forth in this section the center may expend such funds as may be appropriated to the University of Massachusetts at Lowell.

(b) The center shall develop criteria for hurricane loss projection models and methodologies that are specific to Massachusetts and may from time to time adopt revisions to these criteria. In establishing the criteria, the center shall consider any models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges that have the potential for improving the accuracy of or reliability of the hurricane loss projections used in homeowners' insurance rate filings. The criteria developed under this subsection shall be based on actual data on Massachusetts construction practices, codes, and buildings. Criteria developed by the center for this purpose shall be a public record.

(c) Insurers filing rates for approval by the commissioner shall submit to the center all hurricane models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges relevant to the insurer's hurricane loss projection model or methodology that is intended to be used during a rate proceeding on an insurer's rate filing in advance of the rate proceeding. The center shall review the accuracy or reliability of particular models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges submitted to the center by insurers and shall make recommendations relative to the

accuracy and reliability of the particular models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges submitted to the center by insurers using the criteria developed by the center under subsection (b). The center shall have discretion to review findings made by similar centers, commissions, or regulatory bodies and to focus on those aspects of the hurricane loss projection methodologies submitted to the center by insurers that are specific to Massachusetts. All models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges shall be submitted to the center for review within a reasonable period of time, as determined by the center, prior to being admitted as evidence during a rate proceeding before the commissioner of insurance. If any insurer fails to submit any item or items required by the center under this subsection, the commissioner shall direct the insurer to remove the hurricane loss projection from its filing.

(d) There shall be a rebuttable presumption that the recommendations made by the center relative to the accuracy or reliability of particular models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges submitted to the center by insurers shall be considered by the commissioner to be relevant evidence in a rate proceeding on an insurer's rate filing, provided, however that an exemption from the disclosure of trade secrets to the public may apply as set forth in subsection (e).

(e) A trade secret used in designing and constructing a hurricane loss model or methodology, provided by an insurer to the center under subsection (c), is confidential and shall not be deemed a public record, as defined in clause Twenty-sixth of section 7 of chapter 4. The center shall maintain custody of any records made confidential by this paragraph using a secure location or website. That portion of a rate proceeding on an insurer's rate filing at which a trade secret is discussed shall be deemed confidential and not open to disclosure under the open meetings law,

but may be discussed at a closed meeting as provided for in section 11A ½ of chapter 30A.

Employees, volunteers, and students of the center will be bound not to disclose information made confidential.

(f) The center may form a multi-state center with the states of Rhode Island, Connecticut and any other interested state in furtherance of the goals of this section.

SECTION 3. Clause (1) of subsection (A) of section 177O of said chapter 175, as so appearing, is hereby amended by striking out, in line 7, the word “producer” and inserting in place there of the words “reinsurance intermediary broker”

SECTION 4. Clause (1) of subsection D of said section 177O of said chapter 175, as so appearing, is hereby amended by striking out the second sentence.

SECTION 5. Section 1 of chapter 175C of the general laws, as so appearing, is hereby amended by striking out definition of “Basic property insurance” and inserting in place thereof the following definition:-

“Basic property insurance”, insurance against direct loss to property as defined and limited in the standard fire policy and extended coverage endorsement thereon, filed with and accepted by the commissioner, and insurance against direct loss to such property from the perils of vandalism and malicious mischief and dwelling coverages, including liability coverages for one (1) to four (4) family owner and non-owner occupied dwellings either by endorsement or as a stand-alone policy and homeowners coverages, excluding the unlimited guaranteed replacement cost endorsement, but including the scheduled personal property endorsement and such other coverages as the commissioner after public hearing shall determine or the secretary of the United States department of housing and urban development shall designate by rule made in accordance

with the provisions of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448) but shall not include insurance on automobile or manufacturing risks except such classes of manufacturing risks as may, after proper hearing, be designated by the commissioner.

SECTION 6. Chapter 175C of the General Laws, as so appearing, is hereby amended by striking out section 4 and inserting in place thereof the following section:-

Section 4. (a) All insurers licensed to write and engaged in writing in this commonwealth, on a direct basis, basic property insurance or any component thereof in multi-peril policies, shall cooperate in organizing a joint underwriting association which shall provide basic property insurance to eligible applicants who are otherwise unable to obtain such coverage in the voluntary market. Every such insurer shall be a member of the association and remain a member as a condition of its authority to transact such insurance within the commonwealth.

(b) Such association shall be authorized to inspect properties, issue policies, collect premiums and accept payment in installments under plans approved by the commissioner consistent with plans offered by voluntary market insurers and reflecting options for at least 6 payments annually, adjust claims and pay losses on behalf of its members, employ officers, agents and other employees, enter into contracts, sue and be sued in its own name and take all other actions necessary or appropriate to carry out its functions.

(c) The association shall submit to the commissioner a proposed plan of operation, consistent with the purposes of this chapter, to provide for the prompt and efficient provision of basic property insurance to eligible applicants who meet reasonable underwriting standards and are otherwise unable to obtain coverage from insurers in the voluntary market. Such plan of operation shall provide for economical, fair and nondiscriminatory administration including, but not limited to, provisions for preliminary assessment of all members for initial expenses

necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commissions, reasonable underwriting standards and limits of liability, purchase of reinsurance and procedures for determining amounts of insurance to be provided.

(d) The plan of operation shall be subject to approval by the commissioner and shall take effect 10 days after the commissioner approves it. If the commissioner disapproves the proposed plan of operation, the association shall, within 30 days, submit for review an appropriately revised plan of operation and, if the association fails to submit such a plan or if the revised plan is also disapproved by the commissioner, the commissioner shall adopt a plan of operation consistent with this section. The association may, on its own initiative or at the request of the commissioner, amend the plan of operation, subject to approval by the commissioner.

(e) (1) All members of the association shall participate in its writing, expenses, profits and losses in the proportion that the premiums written by each such member for basic property insurance, as defined in section one, except premiums for insurance on automobile and manufacturing risks excluded from the plan and that portion of the premiums attributable to the operation of the association during the preceding calendar year, bear to the aggregate premiums for such insurance written in the commonwealth by all members of the association. Such participation by each insurer in the association shall be determined annually on the basis of such premiums written during the preceding calendar years as disclosed in the annual statements and other reports filed by the insurer with the commissioner.

(2) The participation of each member of the association writing personal lines coverage shall be adjusted based on the homeowners premiums written by such a member in any credit-eligible zip code, defined as all zip codes in Massachusetts where the Fair Plan market share exceeds 1.5

times the Fair Plan statewide market share, never less than 15%, averaged over the latest three calendar years, in accordance with the following clauses:

(i) The participation ratio of each member writing personal lines insurance shall be recalculated, in accordance with the procedures set forth in subparagraph (1) but subtracting the premium written by members of the association writing only commercial lines insurance from the aggregate premiums written in the commonwealth by all members of the association.

(ii) The participation ratio of each member writing personal lines insurance as recalculated in clause (i) shall be multiplied by the sum of the total premium written by the association in the commonwealth and 150% of the total industry homeowners credit eligible premium written in credit-eligible zip codes, as defined in this chapter.

(iii) The product of the multiplication described in clause (ii) of this subsection shall be (A) reduced by subtracting therefrom 150% of the homeowners premium written by each member in any credit-eligible zip code in the year of an MPIUA loss or (B) shall be increased by adding therefrom 150% of the homeowners premium written by each member in any credit-eligible zip code in the year of an MPIUA profit.

(iv) The result of the calculation described in clause (iii) for a carrier, never less than zero, shall be divided by sum of this calculation across all carriers. The resulting ratio shall be the adjusted participation ratio for the member.

(v) The adjusted participation ratio of those members whose participation ratio is calculated as provided in this subparagraph shall apply to that portion of the writings, expenses, profits and losses of the association not recovered by applying the participation ratios of the remaining members of the association as calculated, as provided in subparagraph (1).

(3) The participation of any member of the association writing personal lines insurance shall be

further adjusted if such member has written homeowners insurance during the preceding calendar year, hereafter called the base year, on property that was insured by the association in the year immediately preceding such base year and which is located in any credit eligible zip code, defined as all zip codes in Massachusetts where the Fair Plan market share exceeds 1.5 times the Fair Plan statewide market share, never less than 15%, averaged over the latest three calendar years. The participation of such a member shall be adjusted by (i) reducing the amount of premium written by such member in subparagraph (1) by one hundred percent of the total homeowners insurance premiums written by the member on property described in this clause in the year of an MPIUA loss or by (ii) increasing the amount of premium written by such member in subparagraph (1) by one hundred percent of the total homeowners insurance premiums written by the member on property described in this clause in the year of an MPIUA profit. Such adjustment shall not apply to any insurance written on property that was insured by the member or any affiliate or subsidiary member in either of the two years preceding the base year.

(f) The association shall be governed by a board of 18 directors, who shall serve without compensation. Ten directors shall be elected annually by the members of the association by cumulative voting; 2 directors of associations of insurance agents and brokers doing business in the commonwealth appointed by the commissioner; 4 directors from the general public appointed by the commissioner; and 2 directors from the general public appointed by the attorney general. The 6 directors appointed from the general public by the commissioner of insurance and the attorney general shall serve 3 year terms, staggered in a manner to ensure the annual expiration of the terms of 2 directors, and shall not serve as director for more than 3 consecutive terms. The 6 directors appointed from the general public may not have affiliations with the insurance industry. Cumulative voting by members shall be permitted at all such elections.

197 **SECTION 7.** Subsection (c) of section 5 of said chapter 175C, as so appearing, is hereby
198 amended by inserting after the third sentence, the following sentence: “Nothing in this subsection
199 shall be construed as to prevent the commissioner from considering the following premium
200 adjustments on owner’s policy forms for homeowners in all territories: adjustments to key
201 factors to keep costs reasonable for applicants with Coverage A amounts less than the median
202 Coverage A amount within that territory, coastal area rating factors that are based upon predicted
203 hurricane losses associated with distance from the coast, approving rating adjustments to keep
204 costs reasonable for primary residents, and approving rating adjustments to keep costs reasonable
205 for insureds over the age of 64.”

206 **SECTION 8.** Said section 5 of said chapter 175C, as so appearing, is hereby further
207 amended by inserting the following subsection:-
208 (d) The commissioner shall develop a disclosure form to inform individuals seeking to purchase
209 basic property insurance about the risks associated with choosing solely a stand alone liability
210 policy. This form shall be written in plain language, explained to an individual seeking to
211 purchase stand along liability coverage as their sole basic property insurance, and signed by that
212 individual.

213 **SECTION 9.** Said chapter 175C is hereby further amended by adding the following section:—
214 Section 10. The association shall pay a dividend on homeowners insurance premiums for coastal
215 properties occupied as primary residences having a Coverage A limit not greater than the median
216 Coverage A for the territory in which the property is located. This dividend shall be paid in a year which
217 is the third consecutive year in which there have been no hurricane-related losses in the territory and this
218 dividend shall be a third of all hurricane loss premiums, less the cost of reinsurance purchased by the
219 association. This dividend shall not be paid in a year when such payment shall cause the association to

realize a net loss for that year, and shall only be made in a year in which the association has purchased adequate reinsurance for hurricane losses, as determined by the commissioner. The possibility of a dividend shall not be considered by the commissioner in approving rates proposed by the association

SECTION 10. Notwithstanding the provisions of section 7, the appointment of the 4 directors from the general public appointed by the commissioner of insurance shall be as follows: 2 directors shall be appointed for a term of 3 years, 1 director shall be appointed for a term of 2 years, and 1 director shall be appointed for a term of 1 year. The appointment of the 2 directors from the general public appointed by the attorney general shall be as follows: 1 director shall be appointed for a term of 2 years and 1 director shall be appointed for a term of 1 year. Upon expiration of these appointments, all subsequent appointments of directors from the general public shall be appointed for 3 year terms

SECTION 11. The department of revenue, in consultation with the division of insurance, shall make an investigation and study relative to the benefits and viability of a low interest loan program to assist homeowners in the commonwealth with both the costs associated with the purchase and installation of approved mitigation measures as described in section 2 and homeowners insurance deductibles on damage associated with wind storms. The department shall also study the potential utilization by homeowners as well as the funding required to support such a loan program.

The department of revenue shall file a report of the results of its investigation, along with any legislative and regulatory recommendations, with the joint committee on financial services and the clerks of the senate and house of on or before January 15, 2009.

SECTION 12. Section 99D of chapter 175 of the General Laws shall apply to all policies issued or renewed on or after June 30, 2009.